

# **STATE OF KANSAS**

## **Department of Health and Environment**

### **Notice of Hearing on Proposed Kansas Administrative Regulations**

The Kansas Department of Health and Environment (KDHE), Division of Environment, Bureau of Air, will conduct a public hearing at 10 a.m. Thursday, November 1, in the Flint Hills Conference Room, third floor, Curtis State Office Building, 1000 S.W. Jackson, Topeka, to consider the adoption of proposed amended air quality regulation K.A.R. 28-19-350 Prevention of significant deterioration (PSD) of air quality. A summary of the proposed regulation, the estimated economic impact, and the environmental benefit follows:

#### **Summary of Regulation:**

KDHE is proposing to amend K.A.R. 28-19-350 specifically to implement the revised National Ambient Air Quality Standard (NAAQS) for Fine Particulate Matter (PM<sub>2.5</sub>), to incorporate the deferral for CO<sub>2</sub> emissions from bioenergy and other biogenic sources under the PSD Program, and to remove language which excludes stayed, remanded or vacated provisions. These proposed amendments update the adoption by reference of 40 C.F.R. §52.21 in K.A.R. 28-19-350 to align the state PSD program with the federal program.

When approved by the United States Environmental Protection Agency (USEPA), the proposed amendments preserve the state's authority under existing delegation agreements to administer federal regulations and to ensure that Kansas air quality regulations are current and consistent with federal requirements. When the proposed amended regulation is adopted, KDHE will submit the regulation to the USEPA for approval into the State Implementation Plan (SIP).

**Economic Impact:**

The proposed regulation does not subject the affected parties, KDHE, or other regulatory agencies to additional capital and annual costs of compliance. USEPA expects only marginal cost increases to owners and operators of PM<sub>2.5</sub> sources that become subject to the program (73 FR 28345, May 16, 2008). The USEPA determined that these amendments are unlikely to increase significantly the number of New Source Review (NSR) permits that must be issued but may add to the analyses that sources and federal, state, and local reviewing authorities must conduct. The regulation changes are expected to increase the burden for KDHE associated with major NSR permitting and emissions tracking, collecting and reviewing monitoring data, determining appropriate best available control technology or lowest achievable emission rate, and/or obtaining offsets.

**Environmental Impact:**

Numerous major stationary sources in Kansas emit particulate matter into the air. There is a direct correlation between regulation of these emissions and maintenance of Kansas air quality in order to address the significant health impacts of particulate pollution. KA.R. 28-19-350 enables KDHE to continue ongoing air protection activities with respect to preconstruction permitting of major stationary sources.

The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulatory action. All interested parties may submit written comments prior to 5 p.m. on Friday, November 2, to Miles Stotts, Kansas Department of Health and Environment, Bureau of Air, 1000 S.W. Jackson, Suite 310, Topeka, 66612, by fax to (785) 296-7455, or by e-mail to [mstotts@kdheks.gov](mailto:mstotts@kdheks.gov). During the hearing, all interested parties will be

given a reasonable opportunity to present their comments orally on the proposed regulatory action as well as an opportunity to submit their written comments. In order to give all parties an opportunity to present their comments, it may be necessary to require each participant to limit any oral presentation to an appropriate time frame.

A copy of the proposed regulation and the corresponding economic impact and environmental benefit statement may be obtained from the KDHE Bureau of Air by contacting Miles Stotts at (785) 296-1615 or [mstotts@kdheks.gov](mailto:mstotts@kdheks.gov). Copies may also be viewed at the following locations:

- Department of Air Quality, Unified Government of Wyandotte County - Kansas City, Kansas Health Department, 619 Ann Ave., Kansas City, Kansas
- Johnson County Environmental Department, 11811 S. Sunset, Suite 2700, Olathe
- Curtis State Office Building, 1000 S.W. Jackson, Suite 310, Topeka
- KDHE Northeast District Office, 800 W. 24th St., Lawrence
- KDHE Northwest District Office, 2301 E. 13th St., Hays
- KDHE North Central District Office, 2501 Market Place, Suite D, Salina
- KDHE South Central District Office, 130 S. Market, Suite 6050, Wichita
- KDHE Southeast District Office, 1500 W. 7th St., Chanute
- KDHE Southwest District Office, 302 W. McArtor Rd., Dodge City
- Wichita-Sedgwick County Dept. of Community Health, 1900 E. 9th St., Wichita

The material also is available on the Bureau of Air's website at

<http://www.kdheks.gov/bar/publicnotice.html>. Questions pertaining to the proposed regulation should be directed to Miles Stotts.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and the economic impact and environmental benefit statement in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Pat Bottenberg at (785) 291-3278.

Robert Moser, M.D.

Secretary of Health and Environment

28-19-350. Prevention of significant deterioration (PSD) of air quality. (a) PSD requirements. The requirements of this regulation shall apply to the construction of major stationary sources and major modifications of stationary sources as defined in 40 C.F.R. 52.21 in areas of the state designated as attainment areas or unclassified areas for any pollutant under the procedures prescribed by section 107(d) of the federal clean air act, 42 U.S.C. 7407(d).

(b) Adoption by reference; exceptions.

(1) 40 C.F.R. 52.21, as revised on July 1, ~~2007~~ 2011 and as amended by ~~75~~ 76 fed. reg. ~~31606-31607 (2010)~~ 43507 (2011), is adopted by reference, except as specified in ~~paragraphs~~ paragraph (b)(2) ~~and (3)~~.

(2) The following ~~subsections~~ provisions of the federal regulation adopted in paragraph (b)(1) are excluded from adoption:

(A) Plan disapproval, 52.21(a)(1);

(B) stack heights, 52.21(h);

(C) air quality analysis, 52.21(m)(1)(v);

(D) visibility monitoring, 52.21(o)(3);

(E) public participation, 52.21(q);

(F) environmental impact statements, 52.21(s);

(G) disputed permits or redesignations, 52.21(t);

(H) delegation of authority, 52.21(u); ~~and~~

(I) permit rescission, 52.21(w); and

(J) in 52.21(b)(50)(vi), the following word or phrases:

(i) “Particulate matter (PM) emissions,” in the first sentence; and

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(ii) “PM, ” in the second and third sentences.

~~(3) The following subsections of the federal regulation adopted in paragraph (b)(1), which are subject to a federal court order of stay or remand or have been vacated, are excluded from adoption:~~

~~(A) Routine maintenance, repair, and replacement:~~

~~(i) The second sentence of 52.21(b)(2)(iii)(a);~~

~~(ii) 52.21(b)(55-58); and~~

~~(iii) 52.21(ee); and~~

~~(B) recordkeeping requirements for projected actual emissions: the clause “in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase” in 52.21(r)(6).~~

(c) Provisions adopted by reference; term usage. When used in any provision adopted from 40 C.F.R. 52.21, each reference to “administrator” shall mean the “secretary of health and environment or an authorized representative of the secretary,” except for the following:

(1) In subsections 52.21(b)(3)(iii)(a) and 52.21(b)(48)(ii), “administrator” shall mean both the “secretary of health and environment” and the “administrator of USEPA.”

(2) In subsections 52.21(b)(17), 52.21(b)(37)(i), 52.21(b)(43), 52.21(b)(48)(ii)(c), 52.21(b)(50)(i), 52.21(b)(51), 52.21(g), 52.21(i)(6-8), 52.21(l)(2), and 52.21(m)(1)(vii - viii), “administrator” shall mean only the “administrator of USEPA.”

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(d) Internal references. The following portions of 40 C.F.R. part 51 are hereby adopted by reference:

(1) Subpart I, as revised on July 1, ~~2007~~ 2011 and as amended by ~~75~~ 76 fed. reg. ~~31606 (2010)~~ 43507 (2011); and

(2) appendices S and W, as revised on July 1, ~~2007~~ 2011.

(e) Definitions. For the purposes of this regulation, the following definitions shall apply:

(1) “Act” shall mean the federal clean air act, 42 U.S.C. 7401 et seq.

(2) “Class I, II or III area” shall mean a classification assigned to any area of the state under the provisions of sections 162 and 164 of the act, 42 U.S.C. 7472 and 7474, and amendments thereto.

(3) “State” shall mean the state of Kansas, unless the context clearly indicates otherwise.

(f) Ambient air ceiling protection. In relation to ambient air ceilings, the following requirements shall apply:

(1) Except as stated in paragraph (f)(2) of this regulation, a permit shall not be issued for any new major stationary source or major modification as defined in 40 C.F.R. 52.21(b) if the source or modification will be located in an attainment area or an unclassifiable area for any national ambient air quality standard and if the source or modification would cause or contribute to a violation of any national ambient air quality standard. A major source or major modification shall be considered to cause or contribute

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to a violation of a national ambient air quality standard if the air quality impact of the source or modification would exceed the following levels at any locality that does not or would not meet the applicable national standard:

Pollutant	Averaging Time				
	Annual	24 hrs.	8 hrs.	3 hrs.	1 hr.
Sulphur dioxide	1.0 $\mu\text{g}/\text{m}^3$	5 $\mu\text{g}/\text{m}^3$	-----	25 $\mu\text{g}/\text{m}^3$	-----
PM <sub>10</sub>	1.0 $\mu\text{g}/\text{m}^3$	5 $\mu\text{g}/\text{m}^3$	-----	-----	-----
PM <sub>2.5</sub>	0.3 $\mu\text{g}/\text{m}^3$	1.2 $\mu\text{g}/\text{m}^3$	-----	-----	-----
Nitrogen dioxide	1.0 $\mu\text{g}/\text{m}^3$	-----	-----	-----	-----
Carbon monoxide	-----	-----	0.5 $\text{mg}/\text{m}^3$	-----	2 $\text{mg}/\text{m}^3$

(2) A permit may be granted for a major stationary source or major modification as identified in paragraph (f)(1) of this regulation if the impact of the major stationary source's or major modification's emissions upon air quality is reduced by a sufficient amount to compensate for any adverse impact at the location where the major source or modification would otherwise cause or contribute to a violation of any national ambient air quality standard. Subsection (f) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source is located in an area that has been identified as not meeting either the national primary or secondary ambient air quality standard for that particular pollutant.

(g) Stack height requirements. K.A.R. 28-19-18 through K.A.R. 28-19-18f, regarding stack height requirements, shall apply to the sources subject to this regulation.

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(h) Application required. Each application for a PSD permit shall be submitted by the owner or operator on the forms provided or approved by the department. K.A.R. 28-19-300 through K.A.R. 28-19-304, regarding construction permit and approval requirements, shall apply to the sources subject to this regulation.

(i) Impact on federal class I areas; notification required. If the emissions from any proposed major stationary source or major modification subject to this regulation will affect any air quality-related values in any federal class I area, a copy of the permit application for the source or modification shall be transmitted by the secretary or an authorized representative of the secretary to the administrator of USEPA through the appropriate regional office. The administrator, through the appropriate regional office, shall also be notified of every action taken concerning the application.

(j) Permit suspension or revocation. Any permit issued under this regulation may be suspended or revoked by the secretary upon a finding that the owner or operator has failed to comply with any requirement specified in the permit or with any other statutory or regulatory requirement. This subsection shall not be interpreted to preclude any other remedy provided by law to the secretary.

(k) Public participation requirements. In addition to the requirements of K.A.R. 28-19-204, the following public participation requirements shall be met before issuance of the permit:

(1) The public notice shall include the following:

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(A) A statement specifying the portion of the applicable maximum allowable increment that is expected to be consumed by the source or modification; and

(B) a statement that the federal land manager of any adversely impacted federal class I area has the opportunity to provide the secretary with a demonstration that the emissions from the proposed source or modification will have an adverse impact on air quality-related values in the federal class I area.

(2) A copy of the public notice shall be mailed to the following:

(A) The applicant;

(B) the administrator of USEPA through the appropriate regional office;

(C) any state or local air pollution control agency having jurisdiction in the air quality control region in which the new or modified installation will be located;

(D) the chief executives of the city and county where the source will be located;

(E) any comprehensive regional land use planning agency having jurisdiction where the source will be located; and

(F) any state, federal land manager, or Indian governing body whose lands will be affected by emissions from the new construction or modification.

(3) In addition to those materials required to be available for public review at the appropriate district office or local agency, a summary analysis and discussion of those materials as they relate to establishing compliance with the requirements of this regulation shall be made available for public review.

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(4) Copies of all comments received and the written determination of the secretary shall be made available for public inspection at the appropriate district office or local agency. (Authorized by K.S.A. ~~2009~~ 2011 Supp. 65-3005; implementing K.S.A. ~~2009~~ 2011 Supp. 65-3005 and K.S.A. 65-3008; effective Nov. 22, 2002; amended June 30, 2006; amended Oct. 23, 2009; amended Nov. 29, 2010; amended P-\_\_\_\_\_.)

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**Kansas Department of Health and Environment**  
**Division of Environment**  
**Bureau of Air**



**REGULATORY IMPACT STATEMENT CONSISTING OF:**

**I. ENVIRONMENTAL BENEFIT STATEMENT**

**AND**

**II. ECONOMIC IMPACT STATEMENT**

Pursuant to K.S.A. 77-416

**PERMANENT AMENDMENT OF EXISTING AIR QUALITY REGULATIONS:**

K.A.R. 28-19-350

**February 8, 2012**

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## **Executive Summary**

The Kansas Air Quality Act, K.S.A. 65-3001 *et seq.*, authorizes the secretary of the Kansas Department of Health and Environment (KDHE) to develop rules and regulations to conserve air quality and to control air pollution in the state of Kansas. In large part, the Kansas air quality regulatory program implements the requirements of the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, as a state program pursuant to the Kansas State Implementation Plan (SIP) approved by the United States Environmental Protection Agency (USEPA). Upon adoption of the proposed amendments, KDHE will submit a revised SIP to the USEPA for approval.

KDHE has identified several changes that are needed to maintain consistency with federal rulemaking actions. These proposed amendments update the Kansas air quality regulations, Kansas Administrative Regulation (K.A.R.) 28-19-8 *et seq.*, to incorporate federal rule changes to update the Prevention of Significant Deterioration (PSD) regulation, as appropriate.

KDHE is proposing to amend K.A.R. 28-19-350 “*Prevention of significant deterioration (PSD) of air quality*” specifically to implement the revised National Ambient Air Quality Standard (NAAQS) for Fine Particulate Matter (PM<sub>2.5</sub>), to incorporate the deferral for CO<sub>2</sub> emissions from bioenergy and other biogenic sources under the PSD Program and to remove language which excludes stayed, remanded or vacated provisions.

This Regulatory Impact Statement, consisting of an Environmental Benefit Statement and Economic Impact Statement, is submitted in support of the proposed amendments.

## **Background**

K.A.R. 28-19-350 implements the New Source Review program that the USEPA promulgated at 40 CFR Parts 51 and 52 in response to requirements of the federal Clean Air Act, 42 U.S.C. §7401 *et seq.* The New Source Review provisions of the Clean Air Act, 42 U.S.C. § 7410, combine air quality planning and air pollution technology requirements for major stationary sources and require the states to implement regulatory plans that prohibit the emission of air pollutants “from *any* source or other type of emissions activity within the [s]tate” in amounts that will either contribute significantly to nonattainment or interfere with the

maintenance of national primary or secondary ambient air quality standards (NAAQS).

New Source Review (NSR) is a preconstruction permitting program that requires a major stationary source to obtain a permit before it can begin construction or make a major modification if the construction or modification will increase emissions by an amount large enough to trigger NSR requirements. Under Part C of Title I of the Clean Air Act, states have the primary responsibility for developing a state implementation plan (SIP) and issuing permits subject to the emission limits and other control measures developed in the plan, which is approved by the USEPA. Kansas implements the NSR program for major stationary sources in attainment areas under the requirements of 40 C.F.R. § 52.21 as adopted by reference in K.A.R. 28-19-350. NSR in attainment areas is commonly called Prevention of Significant Deterioration (PSD).

K.A.R. 28-19-350 is being updated to incorporate changes up to July 1, 2010 and to also include the October 20, 2010 *Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC); Final Rule*, and the July 20, 2011 *Deferral for CO<sub>2</sub> Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs; Final Rule* amendments.

In addition to the update for the adoptions by reference, KDHE is proposing to strike the language of K.A.R. 28-19-350(b)(3) in whole. The language excludes specific provisions which were or are subject to a federal court order of stay, remand or vacatur. The language is no longer justifiable as the USEPA has since amended the federal rule to reflect the current status of these specified sections.

The following table lists the relevant 40 C.F.R Part 51 and 52 provisions that have been amended or promulgated since July 1, 2007 up to July 20, 2011. A short summary of each of these amendments is located in Attachment A.

Part/Subpart	Federal Register Citation/Date	Description
51.165-51.166 Subpart I; Part 51 Appendix S; 52.21 Subpart A	72 FR 72616 December 21, 2007	PSD and Nonattainment NSR: Reasonable Possibility in Recordkeeping
51.165-51.166 Subpart I; Part 51 Appendix S; 52.21 Subpart A	73 FR 28347 May 16, 2008	Implementation of the NSR Program for PM <sub>2.5</sub>

<b>51.165-51.166 Subpart I; Part 51 Appendix S; 52.21 Subpart A</b>	73 FR 77895 December 19, 2008	PSD and Nonattainment NSR: Reasonable Possibility in Recordkeeping
<b>52.21 Subpart A</b>	74 FR 26099 June 1, 2009	Implementation of the NSR Program for PM <sub>2.5</sub> ; Final rule and Notice of Grant of Reconsideration and Administrative Stay
<b>52.21 Subpart A</b>	74 FR 48156 September 22, 2009	Implementation of the NSR Program for PM <sub>2.5</sub> : Final Rule to Stay the Grandfathering Provision
<b>51.165-51.166 Subpart I; Part 51 Appendix S; 52.21 Subpart A</b>	74 FR 50116 September 30, 2009	PSD and Nonattainment NSR: Reconsideration of Inclusion of Fugitive Emissions and Administrative Stay
<b>51.165-51.166 Subpart I; Part 51 Appendix S; 52.21 Subpart A</b>	74 FR 65694 December 11, 2009	PSD and Nonattainment NSR: Inclusion of Fugitive Emissions; Interim Final Rule; Stay
<b>51.165-51.166 Subpart I; Part 51 Appendix S 52.21 Subpart A</b>	75 FR 16015 March 31, 2010	PSD and Nonattainment NSR: Inclusion of Fugitive Emissions; Final Rule; Stay
<b>51.166 Subpart I; Part 51 Appendix S; 52.21-52.22 Subpart A 70.2 and 70.12 71.2 and 71.13</b>	75 FR 31606 June 3, 2010	*PSD and Title V Greenhouse Gas Tailoring Rule; Final Rule
<b>51.165-51.166 Subpart I; Part 51 Appendix S; 52.21 Subpart A</b>	75 FR 64902 October 20, 2010	PSD for PM <sub>2.5</sub> – Increments, Significant Impact Levels and Significant Monitoring Concentrations; Final Rule
<b>51.165-51.166 Subpart I; Part 51 Appendix S; 52.21 Subpart A</b>	76 FR 17553 March 30, 2011	PSD and Nonattainment NSR: Inclusion of Fugitive Emissions; Interim Final Rule; Stay
<b>51.166 Subpart I; 52.21 Subpart A; 70.2 Definitions</b>	76 FR 34507 July 20, 2011	Deferral for CO <sub>2</sub> Emissions From Bioenergy and Other Biogenic Sources Under the PSD and Title V Programs

\*Adopted in last update to K.A.R. 28-19-350 (effective Nov. 29, 2010) and EPA approved codified at 40 C.F.R. §52.870(c) [76 FR 9664].

## **I. Environmental Benefit Statement**

### **1) Need for proposed amendments and environmental benefit likely to accrue.**

#### **a) Need**

The USEPA has finalized amendments to the PSD regulations over the past few years to address the revised National Ambient Air Quality Standard (NAAQS) for Fine Particulate Matter (PM<sub>2.5</sub>). The PM<sub>2.5</sub> NAAQS establishes a limit on the acceptable exposure and public health impacts of fine particulate matter. The proposed amendments to K.A.R. 28-19-350 are needed to update the adoption of the federal regulations, codified at 40 C.F.R. §52.21, to align the state PSD program with the federal PSD program. The PSD program is a component of the NSR that

includes procedures to ensure that these air quality standards are maintained. The PSD requirements include but are not limited to:

- Installation of Best Available Control Technology (BACT);
- Air quality monitoring and modeling analyses to ensure that a project's emissions will not cause or contribute to a violation of any NAAQS or maximum allowable pollutant increase (PSD increment);
- Notification of Federal Land Manager of nearby Class I areas; and
- Public comment on the permit.

**b) Environmental benefit**

As enabled under the Clean Air Act, the USEPA established 40 C.F.R. § 52.21 as an essential component of the ongoing process that protects the quality of the air nationally. The Kansas Department of Health and Environment (KDHE) is charged with maintaining overall environmental air quality in Kansas. Major stationary sources in Kansas emit the vast majority of criteria pollutants into the air. There is a direct correlation between regulation of these emitters and improvements in Kansas's air quality. K.A.R. 28-19-350 enables the KDHE to continue ongoing air protection activities with respect to preconstruction permitting of major stationary sources.

**2) When applicable, a summary of the research indicating the level of risk to the public health or the environment being removed or controlled by the proposed rules and regulations or amendment.**

The health effects associated with exposure to PM<sub>2.5</sub> are significant. Epidemiological studies have shown a significant correlation between elevated PM<sub>2.5</sub> levels and premature mortality. Other important effects associated with PM<sub>2.5</sub> exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems. Individuals particularly sensitive to PM<sub>2.5</sub> exposure include older adults, people with heart and lung disease, and children.

On July 18, 1997, the USEPA revised the NAAQS for particulate matter (PM) to add new standards for fine particles, using PM<sub>2.5</sub> as the indicator. The USEPA established health-

based (primary) annual and 24-hour standards for PM<sub>2.5</sub> (62 FR 38652). The USEPA set an annual standard at a level of 15 micrograms per cubic meter (µg/m<sup>3</sup>) and a 24-hour standard at a level of 65 µg/m<sup>3</sup>. The USEPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of PM<sub>2.5</sub> such as visibility impairment, soiling, and materials damage.

On October 17, 2006, the USEPA revised the primary and secondary NAAQS for PM<sub>2.5</sub> and PM<sub>10</sub>. In that rulemaking, the USEPA reduced the 24-hour NAAQS for PM<sub>2.5</sub> to 35 µg/m<sup>3</sup> and retained the existing annual PM<sub>2.5</sub> NAAQS of 15 µg/m<sup>3</sup>. In addition they retained PM<sub>10</sub> as the indicator for coarse PM, retained the existing PM<sub>10</sub> 24-hour NAAQS of 150 µg/m<sup>3</sup>, and revoked the annual PM<sub>10</sub> NAAQS (which had previously been set at 50 µg/m<sup>3</sup>). *See* 71 FR 61236.

The PM<sub>2.5</sub> NAAQS establishes a limit on the acceptable exposure and public health impacts for fine particulate matter. These amendments of K.A.R. 28-19-350 parallel changes to 40 C.F.R. § 52.21 to implement the PM<sub>2.5</sub> NAAQS for PSD.

**3) If specific contaminants are to be controlled by the proposed regulations or amendment, a description indicating the level at which the contaminants are considered harmful according to current available research.**

As discussed above this regulatory action is primarily being proposed to implement the PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS) for Prevention of Significant Deterioration (PSD), however the Kansas PSD program applies to new major sources or major modifications at existing sources for *all pollutants* where the area the source is located is in attainment or unclassifiable with the NAAQS. EPA has promulgated NAAQS for each air pollutant for which air quality criteria have been published. To date, NAAQS have been promulgated for six criteria pollutants: ozone, particulate matter, sulfur oxides, nitrogen oxides, carbon monoxide, and lead (see Attachment B).

## **II. Economic Benefit Statement**

**1) Are the proposed regulations or amendments mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted**

**program?**

Yes. KDHE's authority to fully implement the Clear Air Act programs, which are in part funded through grants from the USEPA, is maintained by assuring that all state program elements are current and consistent with the terms of the federal requirements that KDHE implements.

**2) Do the proposed amendments exceed the requirements of applicable Federal law?**

No, these changes update the state regulations specifically to match the federal requirements.

**3) Description of costs to agencies, to the general public and to persons who are affected by, or are subject to, the regulations:**

**a) Capital and annual costs of compliance with the proposed amendments and the persons who will bear those costs.**

None. The proposed regulation does not subject the affected parties, KDHE, or other regulatory agencies to additional capital and annual costs of compliance. The USEPA has determined that the expansion of the NSR program to cover PM<sub>2.5</sub> and its precursors is expected to increase only marginally the costs to owners and operators of PM<sub>2.5</sub> sources that become subject to the program [73 FR 28345, May 16, 2008].

In Kansas, there are only a few sources per year which are permitted under KDHE's PSD permitting authority. In 2011, there was only one PSD permit issued for which a PM<sub>2.5</sub> BACT analysis was reviewed. The estimated cost to the facility for this incremental cost of the additional pollutant analysis was approximately \$4,000.

**b) Initial and annual costs of implementing and enforcing the proposed amendments, including the estimated amount of paperwork, and the state agencies, other governmental agencies or other persons or entities who will bear the costs.**

The USEPA determined that these amendments are unlikely to increase significantly the number of NSR permits that must be issued, but may add to the analyses that sources and Federal, State, and local reviewing authorities must conduct as part of the construction permit application and review process. They expect the rule changes to increase the burden associated

with major NSR permitting for tracking new emissions of PM<sub>2.5</sub> against increments; collecting ambient air quality monitoring data for existing PM<sub>2.5</sub> concentrations; reviewing the effects of PM<sub>2.5</sub> emissions on soils and vegetation, as well as on air quality related values in Class I areas; determining the appropriate best available control technology or lowest achievable emission rate; and/or obtaining offsets.

In Kansas, the impact of expanding the PSD program to include PM<sub>2.5</sub> has necessitated the reallocation of current KDHE staff responsibilities to absorb the increased time associated with the permitting reviewing process and for tracking new emissions of PM<sub>2.5</sub> against increments. It is estimated that this cost equals approximately that of 0.5 FTE having a monetary value for salary and benefits of \$50,000 - \$60,000.

The USEPA further estimated an average annual burden increase of about 39,000 hours and \$4.3 million for all industry entities that would be affected by this final NSR rule. For the same reasons, they also expect the final rule to increase burden for the State and local authorities reviewing permit applications when fully implemented. In addition, there would be additional burden for State and local agencies to revise their SIPs to incorporate the proposed changes. They estimate the combined increase in burden to average about 16,000 hours and \$700,000 annually for all State and local reviewing authorities [73 FR 28344 May 15, 2008]. To apply these estimates to Kansas, the following correlation cost estimates were determined by applying a less than 1% population density based on the U.S. Census Data for 2010 Kansas population equaling 2,523,118 and a national total of 308,745,538:

- 360 hours and \$39,700 annually for all industry entities affected in Kansas; and
- 148 hours and \$6,469 annually for all State reviewing authorities.

**c) Costs which would likely accrue if the proposed regulations are not adopted, the persons who will bear the costs and those who will be affected by the failure to adopt the regulations.**

If the proposed changes are not adopted, and the amendments to 40 C.F.R. §52.21 are not reflective of current federal requirements and approved in the State Implementation Plan (SIP), the EPA is compelled by the CAA to promulgate a Federal Implementation Plan (FIP) to assure the adequacy of the states ability to maintain the NAAQS.

The implications of the state of Kansas falling out of compliance with Clean Air Act

legislation is not fully understood, as it has yet to occur. One known consequence to non-compliance would result in the loss of affiliated federal transportation funding dollars which are vital to Kansas.

d) **A detailed statement of the data and methodology used in estimating the costs used in the statement.**

KDHE relied on the USEPA's estimated burden statements for the final federal rules promulgating and implementing the National Ambient Air Quality Standard (NAAQS) for Fine Particulate Matter (PM<sub>2.5</sub>).

e) **Description of any less costly or less intrusive methods that were considered by the agency and why such methods were rejected in favor of the proposed regulations.**

There are no less intrusive or less costly methods available for consideration by KDHE to achieve the purposes of the proposed regulation changes.

f) **Consultation with League of Kansas Municipalities, Kansas Association of Counties, and Kansas Association of School Boards.**

KDHE does not anticipate that the proposed amendments and adoptions will have any negative fiscal impact on the constituencies of these three organizations; however, copies of the Regulatory Impact Statement have been provided to these organizations for their review as required.

# **ATTACHMENT A**

**K.A.R. 28-19-350 Amendments**

➤ **§51.165 - 51.166 Subpart I; Part 51 Appendix S; §52.21 Subpart A**

December 21, 2007 Volume 72: 72607 – 72617

This rule finalizes proposed revisions to the regulations governing the major new source review (NSR) programs mandated by parts C and D of title I of the Clean Air Act (CAA). The action clarifies the “reasonable possibility” recordkeeping and reporting standard of the 2002 NSR reform rules. The “reasonable possibility” standard identifies for sources and reviewing authorities the criteria under which an owner or operator of a major stationary source undergoing a physical change or change in the method of operation that does not trigger major NSR permitting requirements must keep records. The standard also specifies the recordkeeping and reporting requirements on such sources. As noted in the proposal, the U.S. Court of Appeals for the DC Circuit in *New York v. EPA* remanded for the EPA either to provide an acceptable explanation for its “reasonable possibility” standard or to devise an appropriately supported alternative. To satisfy the Court’s remand, the EPA is clarifying what constitutes “reasonable possibility” and when the “reasonable possibility” recordkeeping requirements apply.

➤ **§51.165 - 51.166 Subpart I; Part 51 Appendix S; §52.21 Subpart A**

May 16, 2008 Volume 73: 28321 – 28350

The EPA is finalizing regulations to implement the New Source Review (NSR) program for fine particulate matter (that is, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, generally referred to as “PM<sub>2.5</sub>”). The NSR program was created by the Clean Air Act (Act or CAA) to ensure that stationary sources of air pollution are constructed or modified in a manner that is consistent with air quality goals in the area.

The Clean Air Fine Particle Implementation Rule, which was proposed in the Federal Register on November 1, 2005, included requirements and guidance for State and local air pollution agencies to follow in developing State implementation plans (SIPs) and also the NSR provisions. The final implementation rule that was promulgated on April 25, 2007, included all the SIPs related provisions. In this rulemaking, EPA is finalizing the NSR provisions of the November 1, 2005 proposed rule including the major source threshold, significant emissions rate, and offset ratios for PM<sub>2.5</sub>, interpollutant trading for offsets and applicability of NSR to PM<sub>2.5</sub> precursors.

➤ **§51.165 - 51.166 Subpart I; Part 51 Appendix S; §52.21 Subpart A**

December 19, 2008 Volume 73: 77882 – 77902

The EPA is finalizing revisions to the December 31, 2002 New Source Review (NSR) Improvement rules to change the requirements of the major NSR programs regarding the treatment of fugitive emissions. Specifically, this final rule requires that fugitive emissions be included in determining whether a physical or operational change results in a major modification only for sources in the source categories that have been designated through rulemaking pursuant to section 302(j) of the Clean Air Act (Act). Also, this action elaborates on guiding principles for determining fugitive emissions for purposes of NSR and title V permitting.

➤ **§51.165 - 51.166 Subpart I; Part 51 Appendix S; §52.21 Subpart A**

June 1, 2009 Volume 74: 26098 – 26099

The Environmental Protection Agency (EPA or Agency) is providing notice that through a letter signed on April 24, 2009, EPA has granted a petition for reconsideration dated February 10, 2009, submitted by Earthjustice on behalf of the National Resources Defense Council (NRDC) and the Sierra Club, with respect to the final rule titled, “*Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)*,” published on May 16, 2008. In addition, EPA has administratively stayed one of the provisions to which the petitioners objected—a “grandfathering” provision for PM<sub>2.5</sub> contained in the federal prevention

of significant deterioration (PSD) program. The EPA will publish notification in the Federal Register establishing a comment period and opportunity for a public hearing for the reconsideration proceeding.

The petition for reconsideration and request for administrative stay can be found in the docket for the May 16, 2008 rule. The EPA considered the petition for reconsideration and request for stay, along with information contained in the rulemaking docket, in reaching a decision on both the reconsideration and the stay.

➤ **§52.21 Subpart A**

September 22, 2009 Volume 74: 48153 – 48156

In this final action, EPA is issuing a stay, for nine months, on the “grandfathering” provision for particulate matter less than 2.5 micrometers (PM<sub>2.5</sub>) requirements in the Federal Prevention of Significant Deterioration (PSD) program. The grandfathering provision was added to the Federal PSD regulations on May 16, 2008, as part of the final rule titled, “*Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)*.” This stay follows an administrative stay, which was in effect from June 1, 2009, until September 1, 2009, on the same provision. We believe this additional stay will provide sufficient time for EPA to propose, take public comment on, and issue a final action concerning the repeal of the grandfathering provision for PM<sub>2.5</sub> in the Federal PSD program.

➤ **§51.165 - 51.166 Subpart I; Part 51 Appendix S; §52.21 Subpart A**

September 30, 2009 Volume 74: 50115 – 50118

The Environmental Protection Agency (EPA or Agency) is providing notice that through a letter signed by the Administrator on April 24, 2009, EPA granted a petition for reconsideration of the final rule titled, “*Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions*,” published on December 19, 2008 (Fugitive Emissions Rule). EPA’s decision to reconsider was in response to a request made by Natural Resources Defense Council (NRDC) in a letter dated February 17, 2009.

➤ **§51.165 - 51.166 Subpart I; Part 51 Appendix S; §52.21 Subpart A**

December 11, 2009 Volume 74: 65692 – 65696

EPA is making an interim final determination to provide an additional stay of the regulations concerning the inclusion of fugitive emissions.

➤ **§51.165 - 51.166 Subpart I; Part 51 Appendix S; §52.21 Subpart A**

March 31, 2010 Volume 75: 16012 – 16017

In this final action, EPA is issuing a stay for 18 months of the inclusion of fugitive emissions requirements in the federal Prevention of Significant Deterioration (PSD) program published in the Federal Register on December 19, 2008, in the final rule entitled, “*Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Fugitive Emissions*” (Fugitive Emissions Rule). The Fugitive Emissions Rule under the federal PSD program requires that fugitive emissions be included in determining whether a physical or operational change results in a major modification only for sources in industries that have been designated through rulemaking under section 302(j) of the Clean Air Act (Act or CAA). The existing stay is in effect for 3 months; that is, from December 31, 2009 until March 31, 2010.

➤ **§51.166 Subpart I; Part 51 Appendix S; §52.21 - 52.22 Subpart A; §70.2 and §70.12 Subpart A; §71.2 and §71.13 Subpart A**

June 3, 2010 Volume 75: 31514 – 31608

This rule “tailor” the applicability criteria that determines which stationary sources and modification projects become subject to permitting requirements for greenhouse gas (GHG)

emissions under the Prevention of Significant Deterioration (PSD) and title V programs of the Clean Air Act (CAA or Act). This rule was adopted in the last update to K.A.R. 28-19-350 (effective Nov. 29, 2010) and approved by the USEPA codified at 40 C.F.R. §52.870(c) [76 FR 9664].

➤ **§51.165 - 51.166 Subpart I; Part 51 Appendix S; §52.21 Subpart A**

October 20, 2010 Volume 75: 64864 – 64907

The EPA is amending the requirements for particulate matter less than 2.5 micrometers (PM<sub>2.5</sub>) under the Prevention of Significant Deterioration (PSD) program by adding maximum allowable increases in ambient pollutant concentrations (“increments”) and two screening tools, known as the Significant Impact Levels (SILs) and a Significant Monitoring Concentration (SMC) for PM<sub>2.5</sub>. The SILs for PM<sub>2.5</sub> are also being added to two other New Source Review (NSR) rules that regulate the construction and modification of any major stationary source locating in an attainment or unclassifiable area, where the source’s emissions may cause or contribute to a violation of the national ambient air quality standards (NAAQS).

➤ **§51.165 - 51.166 Subpart I; Part 51 Appendix S; §52.21 Subpart A**

March 30, 2011 Volume 76: 17548 – 17556

EPA is taking an interim action to effectuate and extend a stay of the final rule entitled “*Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions*” (Fugitive Emissions Rule) published in the Federal Register on December 19, 2008. The Fugitive Emissions Rule under the Federal NSR program required that fugitive emissions be included in determining whether a physical or operational change results in a major modification only for sources in designated industries. EPA issued a stay of the Fugitive Emissions Rule on March 31, 2010, that was effective for 18 months through October 3, 2011. This action supersedes the stay and thereby corrects potential confusion caused by that stay. To effectuate a stay of the Fugitive Emissions Rule, this action clarifies the stay and the revisions of specific paragraphs in the NSR regulations that were affected by the Fugitive Emissions Rule. This action also extends the stay until EPA completes its reconsideration of the Fugitive Emissions Rule.

➤ **§51.166 Subpart I; §52.21 Subpart A; §70.2 Definitions**

July 20, 2011 Volume 76: 43490 – 43507

This action defers for a period of three (3) years the application of the Prevention of Significant Deterioration (PSD) and Title V permitting requirements to biogenic carbon dioxide (CO<sub>2</sub>) emissions from bioenergy and other biogenic stationary sources. This action is being taken as part of the process of granting the Petition for Reconsideration filed by the National Alliance of Forest Owners (NAFO) on August 3, 2010, related to the PSD and Title V Greenhouse Gas Tailoring Rule. The result of this action is that during this three year period biogenic CO<sub>2</sub> emissions are not required to be counted for applicability purposes under the PSD and Title V permitting programs.

# **ATTACHMENT B**

## National Ambient Air Quality Standards

Pollutant [final rule cite]		Primary/ Secondary	Averaging Time	Level	Form
<a href="#">Carbon Monoxide</a> [76 FR 54294, Aug 31, 2011]		primary	8-hour	9 ppm	Not to be exceeded more than once per year
			1-hour	35 ppm	
<a href="#">Lead</a> [73 FR 66964, Nov 12, 2008]		primary and secondary	Rolling 3 month average	0.15 µg/m <sup>3</sup> <sup>(1)</sup>	Not to be exceeded
<a href="#">Nitrogen Dioxide</a> [75 FR 6474, Feb 9, 2010] [61 FR 52852, Oct 8, 1996]		primary	1-hour	100 ppb	98th percentile, averaged over 3 years
		primary and secondary	Annual	53 ppb <sup>(2)</sup>	Annual Mean
<a href="#">Ozone</a> [73 FR 16436, Mar 27, 2008]		primary and secondary	8-hour	0.075 ppm <sup>(3)</sup>	Annual fourth-highest daily maximum 8-hr concentration, averaged over 3 years
<a href="#">Particle Pollution</a> [71 FR 61144, Oct 17, 2006]	PM <sub>2.5</sub>	primary and secondary	Annual	15 µg/m <sup>3</sup>	annual mean, averaged over 3 years
			24-hour	35 µg/m <sup>3</sup>	98th percentile, averaged over 3 years
	PM <sub>10</sub>	primary and secondary	24-hour	150 µg/m <sup>3</sup>	Not to be exceeded more than once per year on average over 3 years
<a href="#">Sulfur Dioxide</a> [75 FR 35520, Jun 22, 2010] [38 FR 25678, Sept 14, 1973]		primary	1-hour	75 ppb <sup>(4)</sup>	99th percentile of 1-hour daily maximum concentrations, averaged over 3 years
		secondary	3-hour	0.5 ppm	Not to be exceeded more than once per year

as of October 2011

(1) Final rule signed October 15, 2008. The 1978 lead standard (1.5 µg/m<sup>3</sup> as a quarterly average) remains in effect until one year after an area is designated for the 2008 standard, except that in areas designated nonattainment for the 1978, the 1978 standard remains in effect until implementation plans to attain or maintain the 2008 standard are approved.

(2) The official level of the annual NO<sub>2</sub> standard is 0.053 ppm, equal to 53 ppb, which is shown here for the purpose of clearer comparison to the 1-hour standard.

(3) Final rule signed March 12, 2008. The 1997 ozone standard (0.08 ppm, annual fourth-highest daily maximum 8-hour concentration, averaged over 3 years) and related implementation rules remain in place. In 1997, EPA revoked the 1-hour ozone standard (0.12 ppm, not to be exceeded more than once per year) in all areas, although some areas have continued obligations under that standard (“anti-backsliding”). The 1-hour ozone standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is less than or equal to 1.

(4) Final rule signed June 2, 2010. The 1971 annual and 24-hour SO<sub>2</sub> standards were revoked in that same rulemaking. However, these standards remain in effect until one year after an area is designated for the 2010 standard, except in areas designated nonattainment for the 1971 standards, where the 1971 standards remain in effect until implementation plans to attain or maintain the 2010 standard are approved.